

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Local Government, to which was referred Senate Bill No. 92, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 5, delete lines 39 through 40, begin a new paragraph and
- 2 insert:
- 3 **"(g) A court may assess a civil penalty under section 7.5 of this**
- 4 **chapter only if the plaintiff obtained an advisory opinion from the**
- 5 **public access counselor before filing an action under this section as**
- 6 **set forth in section 7.5 of this chapter."**
- 7 Page 6, line 8, delete "knowingly and intentionally" and insert "**with**
- 8 **specific intent to violate the law"**.
- 9 Page 6, line 22, delete "(d)." and insert "**(f)**".
- 10 Page 6, between lines 22 and 23, begin a new paragraph and insert:
- 11 **"(c) A civil penalty may only be imposed as part of an action**
- 12 **filed under section 7 of this chapter. A court may not impose a civil**
- 13 **penalty under this section unless the public access counselor has**
- 14 **issued an advisory opinion:**
- 15 **(1) to the complainant and the public agency;**
- 16 **(2) that finds that the individual or public agency violated this**
- 17 **chapter; and**
- 18 **(3) before the action under section 7 of this chapter is filed.**
- 19 **Nothing in this section prevents both the complainant and the**
- 20 **public agency from requesting an advisory opinion from the public**
- 21 **access counselor.**

(d) It is a defense to the imposition of a civil penalty under this section that the individual failed to perform a duty under subsection (b) in reliance on either of the following:

(1) An opinion of the public agency's legal counsel.

(2) An opinion of the attorney general."

Page 6, line 23, delete "(c)" and insert "(e)".

Page 6, line 23, delete "(g)," and insert "(i)".

Page 6, line 27, delete "(d)" and insert "(f)".

Page 6, line 28, delete "(c)" and insert "(e)".

Page 6, line 42, delete "(e)" and insert "(g)".

Page 7, line 3, delete "(f)" and insert "(h)".

Page 7, line 8, delete "(g)" and insert "(i)".

Page 7, line 11, delete "(d)." and insert "(f)".

Page 7, line 27, after "agency," insert **"considering the public agency's workload and difficulty in fulfilling the request,"**.

Page 10, between lines 34 and 35, begin a new line block indented and insert:

"(14) Education records, as defined by the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g, of students at state educational institutions. However, a student at a state educational institution is entitled to access to the student's own education records as required by the Family Educational Rights and Privacy Act."

Page 17, line 40, delete "without the information redacted." and insert **"with the redacted information included."**

Page 18, delete lines 14 through 15, begin a new paragraph and insert:

"(j) A court may assess a civil penalty under section 9.5 of this chapter only if the plaintiff obtained an advisory opinion from the public access counselor before filing an action under this section as set forth in section 9.5 of this chapter."

Page 18, delete lines 24 through 34, begin a new paragraph and insert:

"(b) If an individual:

(1) continues to deny a request that complies with section 3(a) of this chapter for inspection or copying of a public record after the public access counselor has issued an advisory opinion:

(A) regarding the request for inspection or copying of the public record; and

(B) that instructs the public agency to allow access to the public record; and

(2) denies the request with the specific intent to unlawfully withhold a public record that is subject to disclosure under this chapter;

the individual and the public agency employing the individual are subject to a civil penalty under subsection (g).

(c) If an individual intentionally charges a copying fee that the individual knows exceeds the amount set by statute, fee schedule, ordinance, or court order, the individual is subject to a civil penalty under subsection (g).

(d) A civil penalty may only be imposed as part of an action filed under section 9 of this chapter. A court may not impose a civil penalty under this section unless the public access counselor has issued an advisory opinion:

(1) to the complainant and the public agency;

(2) that instructs the public agency to allow access to the public record; and

(3) before the action under section 9 of this chapter is filed.

Nothing in this section prevents both the person requesting the public record and the public agency from requesting an advisory opinion from the public access counselor.

(e) It is a defense to the imposition of a civil penalty under this section that the individual denied access to a public record in reliance on either of the following:

(1) An opinion of the public agency's legal counsel.

(2) An opinion of the attorney general."

Page 18, line 35, delete "(d)" and insert "**(f)**".

Page 18, line 39, delete "(e)" and insert "**(g)**".

Page 19, line 12, delete "(f)" and insert "**(h)**".

Page 19, line 15, delete "(g)" and insert "**(i)**".

Page 19, line 20, delete "(h)" and insert "**(j)**".

Page 19, line 23, delete "(e)." and insert "**(g).**".

Page 20, delete lines 3 through 42.

Delete page 21.

Page 22, delete lines 1 through 15.

Page 22, line 19, after "superior" delete "," and insert "**or on the advice of the agency attorney or the attorney general,**".

- 1 Page 22, line 24, after "superior" delete "," and insert "**or on the**
- 2 **advice of the agency attorney or the attorney general,**".
- 3 Renumber all SECTIONS consecutively.
 (Reference is to SB 92 as introduced.)

and when so amended that said bill do pass .

Committee Vote: Yeas 10, Nays 0.

Senator Lawson C, Chairperson